

SUBCHAPTER 771

ADMINISTRATIVE GRIEVANCE SYSTEM

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SUBCHAPTER 771

ADMINISTRATIVE GRIEVANCE SYSTEM

- References:** (a) Title 5, Code of Federal Regulations, Part 771, “Agency Administrative Grievance System”
(b) DoD Directive 1400.25, “DoD Civilian Personnel Management System,” November 25, 1996
(c) Section 2105 of title 5, United States Code
(d) Section 709(e) of title 32, United States Code
(e) Section 1590 of title 10, United States Code

A. PURPOSE

This Subchapter establishes the Department of Defense (DoD) Administrative Grievance System (AGS) under 5 CFR 771 (reference (a)). It states DoD AGS policy under DoD Directive 1400.25 (reference (b)). It also assigns responsibilities and prescribes requirements for the DoD AGS under which DoD activities can internally review employee disputes involving working conditions within the control of DoD management. The DoD AGS applies to all DoD Components except the National Security Agency and the Defense Intelligence Agency.

B. POLICY

1. It is DoD policy under DoD Directive 1400.25 (reference (b)) that DoD employees shall be entitled to present disputes under the DoD AGS and have them considered expeditiously, fairly, and impartially, and resolved as quickly as possible. All persons involved in the dispute resolution process shall be free from restraint, interference, coercion, discrimination, or reprisal.

2. Alternative Dispute Resolution (ADR) techniques should be used to resolve disputes consistent with the requirements of this Subchapter. ADR techniques include a broad range of approaches for dealing with conflict and seeking solutions satisfactory to all parties. These techniques include, but are not limited to, problem solving, mediation, facilitation, conciliation, early-neutral evaluation, fact-finding, settlement conferences, ombudsmen, peer review, and arbitration.

C. RESPONSIBILITIES

1. The Deputy Assistant Secretary of Defense (Civilian Personnel Policy) (DASD(CPP)) shall issue AGS policies and requirements governing DoD civilian personnel. The DASD(CPP) shall monitor the implementation and effectiveness of such policies, develop dispute resolution models, and provide guidance on dispute resolution.

2. The Heads of the DoD Components shall ensure the AGS is implemented in their organizations.

3. Installation commanders, or equivalent management officials with delegated appointing authority, shall implement the AGS and shall develop and implement ADR techniques as appropriate under this Subchapter.

4. Deciding officials shall make decisions concerning grievances consistent with the requirements in this Subchapter. A deciding official must be assigned to an organizational level higher than any employee involved in the grievance or having a direct interest in the matter being grieved unless the deciding official is the head of a DoD Component, installation, or activity.

D. AGS REQUIREMENTS

1. **General.** DoD employees are entitled under the DoD AGS to present grievances and to communicate with supervisors or managers and officials in their servicing Civilian Personnel Office/Human Resource Office (CPO/HRO). Employees may represent themselves, or be represented by someone of their choice. The choice of representative may be denied if it would result in a conflict of interest, conflicts with mission priorities, or results in unreasonable costs. Employees and their representatives shall have full access to relevant information and shall be given copies of such information unless to do so would be unduly burdensome or contrary to law or regulation. Employees shall be permitted a reasonable amount of official duty time, if otherwise in a duty status at the employing activity, to present grievances and to communicate with management and personnel officials. Employees may also be given a reasonable amount of official time to prepare a grievance.

2. Coverage

a. Employee coverage

(1) The AGS covers current appropriated fund nonbargaining unit DoD employees as defined in 5 U.S.C. 2105 (reference (c)). It also covers former DoD employees with respect to matters arising during their previous employment at the activity, provided that a remedy is available consistent with applicable law and regulation.

(2) The AGS covers bargaining unit employees when a matter covered by the AGS cannot be grieved under a negotiated grievance procedure (NGP), either because an NGP is not in effect at the relevant time, or because it does not cover the matter being grieved.

(3) The AGS does not cover reinstatement and transfer eligibles who have applied for a position under a merit promotion program, non-citizens recruited overseas and appointed to overseas positions, or nonappropriated fund (NAF) employees.

b. **Subject matter coverage.** Any employment matter may be grieved under the AGS except for the following:

(1) The content of established agency regulations and policy;

(2) Any matter covered by a negotiated grievance procedure or subject to formal review and adjudication by the Merit Systems Protection Board (MSPB), the Office of Personnel Management (OPM), the Federal Labor Relations Authority (FLRA), or the Equal Employment Opportunity Commission (EEOC); or, any matter that the employee files under another review or reconsideration procedure, or dispute resolution process within the DoD;

(3) Nonselection for promotion from a group of properly ranked and certified candidates, or failure to receive a noncompetitive promotion;

(4) Preliminary notice of an action that, if effected, would be covered under the grievance system or excluded from coverage under (2), above;

(5) The substance of an employee's performance elements, standards, or work objectives;

(6) Determinations concerning awards, additional step increases, recruitment or relocation bonuses, retention allowances, physicians comparability or additional pay allowances, supervisory differentials, critical position pay, or dual compensation waivers;

(7) Any action taken under a voluntary, formal agreement entered into by an employee involving geographic relocation or return from an overseas assignment;

(8) Termination of a probationer, return of an employee serving supervisory or managerial probation to a nonsupervisory or nonmanagerial position, or separation or termination of an employee during a trial period;

(9) For Senior Executive Service (SES) employees, performance evaluations and awards (including meritorious or distinguished executive rank awards), reassignment following receipt of an unsatisfactory rating, return to another pay system during the 1-year period of probation or for less than fully successful executive performance or for failure to be recertified, conditional recertification, or termination during probation for unacceptable performance;

(10) Termination or expiration of a time-limited excepted appointment, a term or temporary appointment or promotion, or a Senior Executive Service limited emergency or limited term appointment, on the date specified as a condition of employment at the time the appointment or promotion was made;

(11) The termination of a temporary or term promotion at a time other than in subsection D.2.b.(10), provided the employee was informed in advance of the temporary nature of the appointment or promotion and the employee was returned to his or her former position from which temporarily promoted or to a different position of equivalent grade and pay;

(12) SES or Senior Level pay rate changes;

(13) A separation or termination action except as provided in subsection D.3. below;

(14) Any action taken under 32 U.S.C. 709(e) (reference (d)) involving National Guard Technicians; and,

(15) Any additional exclusions as requested by a DoD Component and approved by the DoD.

3. **Civilian Intelligence Personnel Management System (CIPMS) Employees.** Non-preference eligible CIPMS employees, employed under 10 U.S.C. 1590 (reference (e)), may grieve their removal, suspension, reduction in grade or pay, or furlough for 30 days or less, if they have completed one year of current continuous service in the same or similar position in the DoD under other than a temporary appointment of 2 years or less except for terminations for national security reasons under 10 U.S.C. 1590(e)(1) (reference (e)). An activity's AGS should normally provide for an impartial hearing in removal cases involving such CIPMS employees. These hearings may be done on a reimbursable basis by the Defense Civilian Personnel Management Service.

4. **Time limits.** When calculating time limits under the AGS, the day of an action or receipt of a document is not counted. The last day of the time limit is counted unless it is a Saturday, a Sunday, a legal holiday, or a day on which the employee is not regularly scheduled to work. In those cases, the last day of the time limit shall be moved to the next regularly scheduled work day. All time limits are counted in calendar days.

5. **Grievance file.** The activity shall establish and maintain a separate file for each written grievance filed under the AGS and retain it for 4 years in accordance with applicable laws, regulations, and records retention schedules. The file shall contain all documents or copies of documents related to the grievance.

6. **Process.** Subsections D.6.a. and b., below, contain the basic mandatory processes of the DoD AGS. Installation commanders and management officials with delegated appointing authority may tailor the AGS to meet local needs, but they must comply with the policies and requirements in this Subchapter and retain the rights, responsibilities, and time frames in the AGS. Continued use of ADR techniques throughout the AGS is encouraged.

a. **Problem-solving process**

(1) An employee may informally present a work-related problem to his or her immediate supervisor before filing a formal grievance. If the problem involves a matter or action directly involving that supervisor, and the employee has been unable to resolve the matter with that supervisor, the employee may present the matter to the next level supervisor, if any, within the DoD Component, installation, or activity. The problem must be presented within 15 days following the date of the act or event that the employee believes created the problem, or the date the employee became aware of (or reasonably should have become aware of) the act or event. The employee may present a matter of concern regarding a continuing practice or condition at any time.

(2) A supervisor must consider the employee's problem and attempt to resolve it within 15 days, and no later than 30 days, from the date the problem is first brought to the supervisor's attention, even though it may not be covered by the grievance process. Where appropriate, the use of a neutral (e.g., conciliator, facilitator, or mediator) is encouraged. If the employee presents the problem orally, the supervisor's determination may be oral or written. If the problem is presented in writing, the determination must be in writing. If the problem was not resolved, the supervisor shall inform the employee of the time limits for filing a grievance. If the supervisor believes the matter is not covered by the grievance process, the supervisor shall so inform the employee and advise the employee of the appropriate process, if any, for resolving the problem.

(3) The above time limit for resolving the problem may be extended by mutual agreement to accommodate resolution of the dispute.

b. Grievance Process

(1) An employee may file a formal, written grievance with the designated deciding official (or any official designated to accept grievances on behalf of the deciding official) when a problem is not resolved during the problem-solving process, or where the employee chooses to bypass that process and invoke the grievance process. If the employee used the problem-solving process, the employee must file a grievance no later than 15 days from the conclusion of that process. Where the employee does not use the problem-solving process but raises the matter initially as a grievance, the employee must present the grievance within 15 days following the date of the act or event that the employee believes created the problem, or within 15 days following the date the employee became aware of (or reasonably should have become aware of) the act or event. The employee may present a grievance regarding a continuing practice or condition at any time.

(2) An employee's grievance must be signed, dated, and contain a sufficiently detailed statement of the specific issue(s) and the specific, personal remedy sought; copies of any documents in the employee's possession related to the grievance; and, the name, address, and telephone number of the employee's representative, if any. The remedy must be personal to the employee and may not include a request for disciplinary or other action affecting another employee. An employee may not grieve the same matter raised in any other grievance, appeal, complaint, or other dispute resolution process.

(3) The deciding official shall determine whether to join similar or identical grievances; whether to require, and how to conduct an investigation; whether to allow the grievant's requested representative; and how much official time shall be granted to the employee and the employee's representative. The deciding official may also designate an impartial individual to examine a grievance and, when authorized, to make recommendations concerning its disposition.

(4) The deciding official shall fully and fairly consider the grievance and issue a written decision with supporting rationale for the decision. The deciding official shall issue the decision as soon as possible but normally no later than 60 days from the filing of the grievance. The deciding official may extend time frames when warranted by special circumstances (e.g., when those involved are geographically dispersed or where a fact-finder is used in the process). However, a grievance decision should be rendered no more than 90 days from the filing of the grievance absent mutual agreement to extend this time limit to accommodate resolution of the dispute. If the deciding official fails to render a decision within 90 days absent such mutual agreement, the grievant may request review by the next higher management level, if any, within the DoD Component.

(5) Wherever possible, the deciding official should rule on the merits of a grievance. However, the deciding official may cancel or temporarily suspend a grievance, or the appropriate portion of a grievance, if:

- (a) The grievant requests such action;
- (b) The grievant or grievance is excluded from coverage;
- (c) The grievant fails to provide sufficient detail to identify clearly the matter being grieved or specify the personal relief requested;
- (d) The grievant fails to comply with applicable time limits or procedural requirements or requests actions be taken against another employee; or,
- (e) The grievant raises the same matters under another formal dispute resolution process.

(6) A deciding official's decision on the merits of the grievance is final and not subject to further review. However, an employee may request that an individual at the next higher management level within the DoD Component, if any, review a decision to cancel a grievance.